



Office of Title IX

2022 – 2023

Sexual Harassment Policy

Be seen. Be heard.

Policy and Procedure Implementation: August 14, 2020

Revised: August 2022

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2022 – 2023

Sexual Harassment Policy

THIS POLICY SEEKS TO COMBINE AND IMPLEMENT THE LEGAL, REGULATORY, AND POLICY REQUIREMENTS REGARDING SEXUAL HARASSMENT CONTAINED WITHIN:

- a) Title IX of the Education Amendments Act of 1972, 20 U.S.C. §1681 et seq., Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 CFR Part 106, 85 Federal Regulation 30,026 et seq.
- b) Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act)
- c) North Dakota University System Policy 520. Title IX-Sexual Harassment
- d) North Dakota Century Code Chapter 14-02.4
- e) North Dakota Century Code Chapter 12.1-20
- f) North Dakota Century Code Chapter 15-10-56 (3)(a)
- g) North Dakota Century Code Chapter 44-04

POLICY STATEMENT

Minot State University adheres to all federal, state, and local civil rights laws prohibiting sex-based harassment in employment and education. The University does not discriminate in its admissions practices (except as permitted by law), in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, the University is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status.

The University also prohibits retaliation against any person opposing sexual harassment or participating in any investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sexual harassment, which are prohibited under Title IX and by University policy.

Any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the University community on the basis of sex is in violation of the Sexual Harassment Policy.

Any person may report sex-based harassment (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours).

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Lisa Dooley, Ed.D., Title IX Coordinator Office of Title IX
Memorial Hall, 4th Floor, Room 412
500 University Ave W., Minot, ND 58707 (701) 858-3447
Email: lisa.dooley@ndus.edu • Web: <https://www.minotstateu.edu/title9/index.shtml>



1. Glossary

- a) **Actual Knowledge.** Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any institution official with authority to institute corrective measures on the institution's behalf.
- b) **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- c) **Complainant** means an individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.
- d) **Complaint** (formal) means a document filed/signed by a Complainant or signed by the Title IX Coordinator (or designee) alleging sexual harassment based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the University's education program or activity.
- e) **Confidential Resource** means an employee who is not a Mandated Reporter of notice of sexual harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- f) **Deliberate Indifference.** When an institution's response to sexual harassment is clearly unreasonable in light of the information known to the institution at the time.
- g) **Education program or activity** means locations, events, or circumstances where University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by University.
- h) **Final Determination:** A conclusion, by the preponderance of the evidence, whether the alleged conduct occurred and if so, whether it did or did not violate policy.
- i) **Finding:** A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- j) **Formal Grievance Process** means a method of formal resolution to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45 and State Board of Higher Education Policy 520.
- k) **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- l) **Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- m) **Mandated Reporter** means an employee of University who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator (or designee).
- n) **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- o) **Official with Authority (OWA)** means an employee of University explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of University.
- p) **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- q) **Resolution** means the result of an informal or Formal Grievance Process.
- r) **Sanction** means a consequence imposed on a Respondent who is found to have violated this policy.
- s) **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- t) **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the complainant or respondent.
- u) **Title IX Coordinator** is the official designated by University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

2. Rationale for Policy

The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual harassment and retaliation.

The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment and retaliation.

3. Policy Conflicts

Any conflicts between this Policy and any existing SBHE Policy, NDUS Procedure, institution policy or procedure, or student or employee handbook shall be resolved in favor of this Policy. Speech or conduct which does not meet the definition of Sexual Harassment under this policy may be addressed pursuant to SBHE Policy 503.1.

4. Shared Services and Cooperation between Institutions

All institutions should work collaboratively with other institutions, the NDUS Office, legal counsel, and other resources and seek uniformity in processes and procedures to the greatest extent possible. Institutions may enter into agreements with other institutions or the NDUS Office to arrange for the availability of investigators, advisors, decision-makers, and individuals to facilitate an informal resolution process. Such agreements must include arrangements to share the costs of utilizing shared personnel, potential issues posed by FERPA and the confidentiality requirements of this Policy, and other issues raised by legal counsel.

5. Applicable Scope

The core purpose of this policy is the prohibition of sex-based harassment, including sexual harassment, sexual assault, stalking, dating violence or domestic violence and sexual exploitation. When an alleged violation of this policy is reported, the allegations are subject to resolution as determined by the Title IX Coordinator(or designee), and as detailed below.

When the Respondent is a member of the University community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, and staff. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

The University recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of sexual harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the University community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

6. Title IX Coordinator

The Title IX Coordinator oversees implementation of the University's policy on sexual harassment. The Title IX Coordinator has the primary responsibility for coordinating University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this policy.

The Title IX Coordinator (or designee) manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator (or designee) oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator (or designee), contact the University's President. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator (or designee).

Reports of misconduct committed by the Title IX Coordinator (or designee) should be reported to the University's President. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator (or designee).

7. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Lisa Dooley, Ed.D., Title IX Coordinator

Office of Title IX

Memorial Hall, 4th Floor, Room 412

500 University Ave W., Minot, ND 58707 (701) 858-3447

Email: lisa.dooley@ndus.edu • Web: <https://www.minotstateu.edu/title9/index.shtml>

The University has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sex-based harassment and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

The Office for Civil Rights/Chicago
U.S. Department of Education
John C. Kluczynski Federal Building
230 South Dearborn Street,
37th Floor, Chicago, IL 60604
Telephone: (312) 730-1560,
FAX: (312) 730-1576,
TDD: (800) 877-8339,
Email: OCR.Chicago@ed.gov, website: ed.gov/ocr

8. Notice/Complaints of Sexual Harassment and/or Retaliation

Notice or complaints of sexual harassment, and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator (or designee), or deputy/deputies. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator (or designee) or any other official listed.
- 2) Report online, using the reporting form posted at <https://www.minotstateu.edu/title9/incident-reporting.shtml>. Anonymous reports are accepted but the University may have a limited ability to investigate. The University tries to provide supportive measures to all Complainants, which may not be possible with an anonymous report. The University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety. In addition, reporting does not necessarily oblige the University to initiate a formal response. Therefore, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator (or designee) alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator (or designee) in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator (or designee) will contact the Complainant to ensure that it is filed correctly.

9. Expectations Regarding Unethical Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome. Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Minot State University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

10. Supportive Measures

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator (or designee) promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator (or designee) works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party. Supportive measures may not restrict any party's rights under the United States Constitution.

These actions may include, but are not limited to:

- a) Referral to counseling, medical, and/or other healthcare services
- b) Referral to the Employee Assistance Program
- c) Referral to community-based service providers
- d) Student financial aid counseling
- e) Altering campus housing assignment(s)
- f) Altering work arrangements for employees or student-employees
- g) Safety planning
- h) Providing campus safety escorts
- i) Implementing contact limitations (no contact orders) between the parties
- j) Academic support, extensions of deadlines, or other course/program-related adjustments
- k) Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- l) Timely warnings
- m) Class schedule modifications, withdrawals, or leaves of absence
- n) Increased security and monitoring of certain areas of the campus
- o) Any other actions deemed appropriate by the Title IX Coordinator (or designee)

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

11. Emergency Removal

The University can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator (or designee) in conjunction with the Behavioral Intervention Team [BIT] using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to meet with the Title IX Coordinator (or designee) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator (or designee) determines it is equitable to do so.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator (or designee) for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator (or designee) has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include suspension, expulsion, or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator (or designee), these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's or employee's access to or use of facilities or equipment, authorizing an administrative leave (non-student employee Respondent), allowing a student to withdraw or take grades of incomplete without financial penalty, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. At the discretion of the Title IX Coordinator (or designee), alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

There is no further appeal process for emergency removal decisions following the meeting with the Title IX Coordinator.

12. Timeframe

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints can take 60-90 calendar days to resolve, typically. There may be exceptions and extenuating circumstances for good cause that can cause a resolution to take longer, but the University will avoid all undue delays within its control. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for accommodations for language or disability.

Any time the general timeframes for resolution outlined in University procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

13. Privacy

Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of harassment, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Division of Student Affairs, University Campus Security, and the Behavioral Intervention Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

14. Jurisdiction of the University

This policy applies to the education program and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of University's community in order for this policy to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to University's educational program. The recipient may also extend jurisdiction to off-campus and/or to online conduct when

the Title IX Coordinator (or designee) determines that the conduct affects a substantial University interest. Regardless of where the conduct occurred, the Recipient will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

A substantial University interest includes:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, tribal, or federal law;
- b) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator (or designee) will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus security if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator (or designee).

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator (or designee) can assist the Complainant by liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator (or designee) may be able to advocate for a student or employee Complainant who experiences harassment in an externship, study abroad program, or other environment external to University where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

15. Reporting Time Limits

There is no time limitation on providing notice/complaints to the Title IX Coordinator (or designee). However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, a change in policy) is at the discretion of the Title IX Coordinator (or designee), who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

16. Online Sexual Harassment and/or Retaliation

The policies of the University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment.

While the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip, sharing inappropriate content via Snapchat or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-

harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial disruption in a University program or activity. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

17. Nondiscrimination Policy

The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

Minot State University does not engage in discrimination or harassment against any person because of race, color, religion or creed, sex, gender, gender identity, pregnancy, national or ethnic origin, disability, age, ancestry, marital status, sexual orientation, veteran status, political beliefs or affiliations, or information protected by the Genetic Information Nondiscrimination Act ("GINA"); and complies with all federal and state non-discrimination, equal opportunity and affirmative action laws, orders and regulations, including remaining compliant and consistent with the Civil Rights Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972. This policy on non-discrimination applies to admissions, enrollment, scholarships, loan programs, participation in University activities, employment, and access to participation in, and treatment in all University programs and activities. The University prohibits retaliation against any individual or group who exercises its rights or responsibilities protected under the provisions of state law, federal law and/or University policy. Employees or students who violate this policy may face disciplinary action up to and including separation from the University. Third parties who commit discrimination or harassment may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

Questions, comments, or complaints regarding sexual harassment may be directed to the Title IX Office. All other forms of discrimination (e.g. racial) or harassment may be directed to the Vice President for Student Affairs or the Director of Human Resources, as appropriate. Complaints may also be filed with the U.S. Department of Education, Office for Civil Rights.

When brought to the attention of the University, any such discrimination will be promptly and fairly addressed and remedied by the University according to the appropriate grievance process.

18. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the North Dakota Century Code Chapter 14-02.4 regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

- 1) Sexual Harassment. Conduct, on the basis of sex, constituting one (or more) of the following:
 - i. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
 - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
 - iii. Sexual assault, dating violence, domestic violence, or stalking, as defined in this section.

Whether conduct is unwelcome is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be

evidenced.

- 2) Sexual assault, defined as:
 - I. Sex offenses, Forcible:
 - a) Rape:
 - i. Penetration, no matter how slight,
 - ii. of the vagina or anus with any body part or object, or
 - iii. oral penetration by a sex organ of the Respondent,
 - iv. without the consent of the Complainant (NDCC § 12.1-20-03).
 - b) Fondling:
 - i. The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii. for the purpose of sexual gratification,
 - iii. without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
 - II. Sex Offenses, Non-forcible:
 - a) Incest:
 - i. Sexual intercourse,
 - ii. between persons who are related to each other within the degrees wherein marriage is prohibited by North Dakota law (NDCC § 12.1-20-11).
 - b) Statutory Rape:
 - i. Sexual intercourse,
 - ii. with a person who is under the statutory age of consent (NDCC § 12.1-20-03; NDCC § 12.1-20-11)).
- 3) Dating Violence, defined as:
 - a) violence,
 - b) committed by the Respondent,
 - c) who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interaction between the Complainant and Respondent.
- 4) Domestic Violence, defined as:
 - a) violence,
 - b) committed by the Respondent who is
 - c) a current or former spouse or intimate partner of the Complainant, or
 - d) a person with whom the Complainant shares a child in common, or
 - e) cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f) similarly situated to a spouse of the Complainant, or
 - g) any person whose acts the Complainant is protected by the domestic or family violence laws of North Dakota (NDCC § 14-07.1).

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or intimate partners.

- 5) Stalking, defined as:
 - a) engaging in a course of conduct,
 - b) directed at a specific person,
 - c) that would cause a reasonable person to fear for the person's safety, or
 - d) the safety of others; or
 - e) Suffer substantial emotional distress.

For the purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant; substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats,

intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual; however, non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways, Therefore it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is clearly communicated. If consent is withdrawn, that sexual activity should cease. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

19. Other Prohibited Forms of Misconduct

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University additionally prohibits the following offenses as forms of sexual misconduct outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- 1) Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:

- a) Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed). Invasion of sexual privacy.
- b) Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photo-graphed person's consent), including the making or posting of revenge pornography.
- c) Prostituting another person.
- d) Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.
- e) Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- f) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connection.
- g) Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- h) Knowingly soliciting a minor for sexual activity.
- i) Engaging in sex trafficking.
- j) Creation, possession, or dissemination of child pornography.
- k) Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.

20. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator (or designee) and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

The University and any member of the University's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sexual misconduct or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sexual misconduct or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

21. Mandated Reporting

All University employees (faculty, staff, contracted staff, and administrators) are expected to report actual or suspected sexual harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected misconduct or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, they should file a formal complaint with the Title IX Coordinator (or designee).

The following sections describe the reporting options at University for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination

Off-campus (non-employees):

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

University employees who are confidential resources will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

b. Mandated Reporters and Formal Notice/Complaints

All employees of University (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator (or designee) all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors that may violate this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator (or designee).

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from University. Supportive measures may be offered as the result of such disclosures without formal action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment of which they become aware is a violation of University policy and can subject the Mandated Reporter to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

22. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator (or designee), who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator (or designee) has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator (or designee) may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's (or designee) decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator (or designee) must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator (or designee) executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly re-solved through these procedures.

23. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

24. False Allegations and Evidence

Deliberately false accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

25. Amnesty for Complainants and Witnesses

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses may be hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University's community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses' amnesty from minor policy violations — such as underage consumption of alcohol or the use of illicit drugs — related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves. The University maintains a policy of amnesty for students who offer help to others in need (for example, underage drinking). While policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

26. Prevention & Education

University is committed to the prevention of sexual harassment, dating/domestic violence, and stalking through educational and awareness programs. Prevention and education programs include an overview of the university's policy and procedures; relevant definitions, including prohibited conduct; the impact of alcohol and illegal drug use; effective consent; safe and positive options for bystander intervention; and information about risk reduction, resources, and reporting options.

- a) Students. Every University student must complete this training each academic year. All Incoming first- year students will receive primary prevention and awareness programming as part of their orientation. Returning students will receive ongoing training each academic year. Failure to complete the required training will result in a hold that prevents all registration activity being placed on the student account until the training is complete.
- b) Employees. Every University employee must complete this training each academic year. All new employees will receive primary prevention and awareness programming as part of their orientation. Returning employees will receive ongoing training each academic year. University employees who fail to complete required training by the stated deadline may be subject to appropriate disciplinary action (i.e. a letter of reprimand placed in their personnel file).

This training, by its nature, addresses issues of sexual harassment, misconduct, and violence. The University understands that the training may trigger an emotional response, especially if you have experienced or been impacted by these issues or behaviors. If you have concerns, questions, or would like additional information regarding the training, please contact the Title IX office.

27. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) Violence Against Women Act (VAWA)-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to campus security

regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

28. Preservation of Evidence

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The Recipient will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the Trinity Hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

Stalking

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator (or designee), the importance of taking these actions will be discussed, if timely.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY

1) Overview

The University will act on any formal or informal notice/complaint of violation of the policy that is received by the Title IX Coordinator (or designee) by applying these procedures.

The procedures below apply to qualifying allegations of Title IX sexual Harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

2) Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator (or designee) of an alleged violation of the Policy, the University initiates a prompt initial assessment to determine next steps taken.

The University will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) An informal resolution (upon submission of a Formal Complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

A Formal Grievance Process will determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or misconduct, their potential recurrence, or their effects.

3) Initial Assessment

Following receipt of notice or a formal complaint of an alleged violation of this Policy, the Title IX Coordinator (or designee) engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator (or designee) seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired. If they do not wish to do so, the Title IX Coordinator (or designee) determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator (or designee) assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator (or designee) reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator (or designee) works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator (or designee) works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
- If a supportive and remedial response is preferred, the Title IX Coordinator (or designee) works with the Complainant to identify their desired supportive measures and then seeks to facilitate implementation, if appropriate. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred, the Title IX Coordinator (or designee) assesses whether informal resolution of the complaint is permissible, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- If a Formal Grievance Process is preferred, the Title IX Coordinator (or designee) determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator (or designee) will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator (or designee) determines that Title IX does not apply (and will dismiss that aspect of the complaint, if any), assesses which policies may apply, and will refer the matter accordingly (i.e. Student Conduct Policy; Human Resource Policy; Academic Affairs Policy). Please note that dismissing a complaint under Title IX is just procedural, and does not limit University's authority to address a complaint with an appropriate process and remedies.

a) Violence Risk Assessment

In some cases, the Title IX Coordinator (or designee) may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator (or designee) should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct and/or grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal from the University by the Respondent;
- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed.

Threat assessment is the process of evaluating the legitimacy of the threat of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by the BIT team members. A VRA authorized by the Title IX Coordinator (or designee) should occur in collaboration with the BIT. Where a VRA is required by the Title IX Coordinator (or designee), a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not a psychological or mental health assessment. A VRA assesses the legitimate risk of violence, often with a focus on targeted/predatory escalations, and is supported by research.

b) Dismissal (34 CFR Part 106.45)

The University must dismiss a formal complaint under Title IX or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in this Policy, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations); and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

The University may dismiss a formal complaint under Title IX or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator (or designee) in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

4) Counterclaims

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator (or designee). When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5) Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally). The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator (or designee). The decision to grant this request is at the sole discretion of the Title IX Coordinator (or designee) and will be granted equitably to all parties.

a. Advisors

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

Institutions are not required to provide attorneys to parties to act as advisor. However, the Title IX Coordinator (or designee) will offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the University pool, the Advisor may not have been trained and may not be familiar with University policies and procedures.

Institutions are not required to attempt to create equality of advisors between that parties, particularly where one party selects an outside advisor, but should endeavor to seek parity of advisors the institution provides advisor to both parties.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. Advisors in Hearings

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

c. Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University cannot guarantee equality in Advisors, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

e. Advisor Violations of University Policy

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented, possibly including removing the Advisor from the meeting. Subsequently, the Title IX Coordinator (or designee) will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they

wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator (or designee) or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will comply with that request.

g. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Recipient's privacy expectations.

h. Expectations of an Advisor

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

i. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout, with the exception that a party cannot dismiss an Advisor who was appointed the University except in the case of bias or conflict of interest. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators.

The parties are expected to provide timely notice to the Title IX Coordinator (or designee) if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator (or designee) of the identity of their hearing Advisor at least two (2) business days before the hearing.

6) Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages parties to discuss this with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include three different approaches:

- 1) When the Title IX Coordinator (or designee) can resolve the matter informally by providing supportive measures to remedy the situation.
- 2) When the parties agree to resolve the matter through an alternate resolution mechanism including mediation, restorative practices, etc.;
- 3) When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Complainant or Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator (or designee) to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution. The Title IX Coordinator (or designee) may look to the following factors to assess whether Informal Resolution is appropriate:

- The parties' amenability to Informal Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Informal Resolution (time, staff, etc.)

The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Coordinator (or designee). The Title IX Coordinator (or designee) maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

Informal Resolution is not permitted when it has been alleged that an employee has harassed a student.

b. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator (or designee) will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator (or designee) will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator (or designee) implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or misconduct, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

7) Formal Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators to carry out the process.

a. Pool Member Roles

Members of the Pool are trained at least annually, and can serve in the following roles, at the direction of the Title IX Coordinator (or designee):

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To investigate complaints

- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

b. Pool Member Training

The Title IX Coordinator (or designee), in consultation with the President, appoints the Pool, which acts with independence and impartiality.

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University’s Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

The materials used to train all members of the Pool are publicly posted here: <https://www.minotstateu.edu/title9/training-materials.shtml>

8) Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator (or designee) will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University’s policy on retaliation,

- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator(or designee) any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address (es) of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9) Resolution Timeline

The University will make a good faith effort to complete the resolution process within a 60 to 90 business- day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator (or designee), who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10) Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator (or designee) appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

11) Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator (or designee), Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for Complainants or Respondents generally, or for a specific party.

The Title IX Coordinator (or designee) will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator (or designee) will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator (or designee), concerns should be raised with the University's president.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported mis- conduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12) Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) calendar days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13) Delays in the Investigation Process and Interactions with Law Enforcement

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14) Investigation Process Steps

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator (or designee), if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator (or designee), as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10)

business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days.

- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

15) Witnesses Role and Participation in the Investigation

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The Investigator(s) will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

16) Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17) Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18) Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator (or designee) will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker(s)—unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator (or designee) will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-maker(s) depending on the context of the alleged misconduct.

19) Hearing Decision-maker Structure

The University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator (or designee). The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator (or designee).

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator (or designee) may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator (or designee) may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Title IX Coordinator or designee.

20) Evidentiary Considerations

Neither the investigation nor the hearing will consider: 1) incidents not directly related to the possible violation(s), unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

21) Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator (or designee) or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator (or designee) at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias. This must be raised with the Title IX Coordinator (or designee) at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Title IX Coordinator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator (or designee) if they do not have an Advisor, and the Recipient will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator(or designee) to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Parties cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the

term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 calendar day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22) Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator (or designee) at least five (5) business days prior to the hearing.

The Title IX Coordinator (or designee) can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator (or designee) know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23) Pre-Hearing Preparation

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator (or designee), will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker(s) must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator (or designee) as soon as possible and no later than two (2) days prior to the hearing. Decision-maker(s) will only be removed if the Title IX Coordinator (or designee) concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator (or designee) will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator (or designee) as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24) Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will

exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator (or designee), or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

25) Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual misconduct, sexual harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the misconduct, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy.

Participants at the hearing will include the Chair, any additional panelists, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, Title IX Coordinator (or designee) may act as the administrative facilitator of the hearing or will designate an individual to act as the facilitator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

26) Joint Hearings

In hearings involving more than one Respondent or Complainants that arise out of the same facts or circumstances, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator (or designee) may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27) The Order of the Hearing — Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator (or designee) will review and decide the challenge.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28) Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing, but not during deliberations. If the parties do not object, the Chair may dismiss the Investigator(s) after their testimony and cross-examination.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29) Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during

questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator (or designee), and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

30) Refusal to Submit to Questioning; Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

31) Hearing Recordings

Hearings (but not deliberations) are recorded by the University for the purpose of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator (or designee). No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator (or designee).

32) Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used, which means the evidence must show that it is more likely than not that the Respondent committed the conduct as alleged. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will review any pertinent conduct history provided by the Title IX Coordinator (or designee) and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This report must be submitted to the Title IX Coordinator (or designee) within seven (7) business days of the end of deliberations, unless the Title IX Coordinator (or designee) grants an extension. If an extension is granted, the Title IX Coordinator (or designee) will notify the parties.

33) Notice of Outcome

Using the deliberation statement, the Title IX Coordinator (or designee) will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome may then be reviewed by legal counsel. The Title IX Coordinator (or designee) will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within seven (7) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by the University, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

34) Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the misconduct, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of misconduct, harassment, and/or retaliation
- The need to remedy the effects of the misconduct, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

The following are sanctions that may be imposed upon students or organizations singly or in combination:

- 1) **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- 2) **Required Counseling:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- 3) **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- 4) **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at University.
- 5) **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to

- attend University-sponsored events.
- 6) **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
 - 7) **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
 - 8) **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

Employee Sanctions

Responsive actions for an employee include:

- 1) Warning (Written or Verbal)
- 2) Performance Improvement Plan
- 3) Required Counseling
- 4) Required Training or Education
- 5) Probation
- 6) Demotion
- 7) Reduction in Pay
- 8) Loss of annual pay increase
- 9) Loss of Oversight or Supervisory Responsibility
- 10) Delay of Tenure Track Progress
- 11) Suspension/Administrative Leave with pay
- 12) Suspension/Administrative Leave without pay
- 13) Termination
- 14) **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

37) Withdrawal or Resignation While Charges Pending

A. Students

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter. Per North Dakota Century Code § 44-04-18.28, any record related to a complaint or investigation under Title IX at an institution under the control of the state board of higher education which contains personally identifiable information about a party to the complaint is an exempt record.

38) Appeals

Any party may file a Request for Appeal, but it must be submitted in writing to the Title IX Coordinator (or designee) within five (5) business days of the delivery of the Notice of Outcome when the sanction does not involve student suspension, expulsion, or dismissal from employment.

Additional specified timelines include the following:

- a) Within twenty (20) calendar days for faculty when the sanction is dismissal from employment. (SBHE Policy 605.4)
- b) Within five (5) working days for staff when the sanction is dismissal from employment. (NDUS HR Policy 27.2)
- c) Within one (1) year for students when the sanction includes suspension or expulsion. (SBHE Policy 514)

The appeal decision maker(s) will be designated by the Title IX Coordinator (or designee). No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

A. Grounds for Appeal

Appeals are limited to the following grounds:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator (or designee), Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator(or designee), and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other party(ies) and their Advisors, the Title IX Coordinator(or designee), and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be emailed a copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

B. Sanctions Status during the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

C. Appeal Considerations

- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Title IX Coordinator (or designee) and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Chair/Panel may order a new investigation and/or a new hearing with a new Pool members serving in the Investigator and Decision-maker roles.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

39) Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator (or designee) may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator (or designee), certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator (or designee) will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

40) Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator (or designee).

41) Recordkeeping

The University will maintain for a period of at least seven years records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- 2) Any disciplinary sanctions imposed on the Respondent;
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- 4) Any appeal and the result therefrom;
- 5) Any Informal Resolution and the result therefrom;
- 6) All materials used to train Title IX Coordinator (or designee), Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on University's website; and
- 7) Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a) The basis for all conclusions that the response was not deliberately indifferent;
 - b) Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - c) If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

42) Disabilities Accommodations in the Resolution Process

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator (or designee), determine which accommodations are appropriate and necessary for full participation in the process.

43) Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator (or designee). The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator (or designee) may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator (or designee) may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change — or court decisions alter — the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings. This document does not create legally enforceable protections beyond the protection of the state and federal laws which frame such policies and codes, generally.



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